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TO:
Olga Asinovsky

FROM:
William D. Jackson.

COMPANY:

DATE:
NOVEMBER 29, 2006

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PHONE NUMBER:

SENDER'S REFERENCE NUMBER:
31223.00035 (F-918)

RE:

YOUR REFERENCE NUMBER:
Serial No. 10/816,462

☐ URGENT

☐ FOR REVIEW

☐ PLEASE COMMENT

☐ PLEASE REPLY

NOTES/COMMENTS:

Following is a Response to Office Action (in response to September 1, 2006 Office Action).

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F-918 (31223.00035)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Alain Van Sinoy, et al
Serial Number: 10/816,462
Filing Date: April 1, 2004
Title: Polyethylene blends with good contact transparency
Group Art Unit: 1711
Examiner: Olga Asinovsky
Customer No.: 25264

Mail Stop AMENDMENT - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Facsimile and First Class Certificate of Mailing

I hereby certify that the papers enclosed herein are being deposited with the United States Postal Service via facsimile to Fax No. 571/273-8300 and by first class mail with sufficient postage, in an envelope addressed to: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450;

Dorothy Harris
Dorothy Harris

November 29, 2006
Date of Deposit

Sir:

Response to Office Action

This application has been carefully reviewed after a consideration of the final rejection of September 1, 2006. It is noted that the rejection based upon the patent to Marechal has not been retained and accordingly the only rejection remaining is the rejection based upon the Debras patent, stated alternatively as being under 35 U.S.C. 102 or under 35 U.S.C. 103(a). However, it is clear that there is no issue of anticipation here. This is evident from the comments made not only in the first office action but also in the final rejection regarding the lack of a specific disclosure in Debras of melt index MI2 and density. For example, with respect to the melt index

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MI2 the final rejection makes the comment that is reasonable to presume that the blend in Debras would possess the same melt index MI2 as called for in the applicants' claims. A similar statement acknowledging the abjunct of a disclosure in Debras of the claimed density and melt index of the second resin is made in the first office action.

With respect to the patent to Debras, applicants would respectfully note that this reference is not available to establish obviousness under 35 U.S.C. 103 in view of the provisions of subparagraph (c) of section 103. As was noted in the applicants' previous response, the Debras reference and this application are commonly assigned. This application is assigned to ATOFINA Research which is the same entity as Fina Research SA shown as the assignee of record in the Debras patent. As reflected by the name change documents submitted herewith as Exhibit A, the name of Fina Research SA shown on the record as being the assignee of the Debras patent has been changed to ATOFINA Research the assignee of record of this application. (The name of ATOFINA Research has been subsequently changed to Total Petrochemicals Research Feluy). Thus as pointed at in applicant's previous response, the invention claimed in this application and the subject matter of the Debras patent were, at the time invention was made, owned by or subject to an obligation of assignment to the same person. Thus in view of the provisions of 35 U.S.C. 103(c), the Debras patent is not available as a reference under 35 U.S.C. 103 under the practice set forth in MPEP §706.02 (1) (2) (II), §706.02 (1)(3) and §706 (1)(3)(b).

In view the common assignee of the Debras patent and the present application it is respectfully submitted that the Debras patent is not available as a reference against this application under the provisions of 35 U.S.C. 103 (c). For this reason and for the additional

reasons set forth below, it is respectively requested that the rejection of claims of 1, 8 and 13-17 be withdrawn and the application be considered to be in condition for allowance.

Further with respect to the response to arguments made in the final rejection and those comments made in the previous rejection incorporated by reference into the final rejection, applicant would respectively point out that the subject matter claimed here involves a combination of a plurality of parameters, not of all which are disclosed in Debras and none of which are set forth in the reference in the combination called for in the claimed process. As set forth in independent claim 1, the first metallocene produced polyethylene is said to have a density of 0.920 to 0.940 g/cm³ in combination with a melt index MI2 of 0.1-10dg/min. The second polyethylene resin is specified to have a density of .940-0.970 g/cm³ together with a melt index MI2 of 0.05 to 10 dg/min. The resin resulting from physically blending the two components together has a multi-modal molecular weight distribution with a density ranging from 0.935-0.960g/cm³ and a melt index MI2 of 0.2-0.9dg/min.

To the extent that Debras discloses HLMI values, it would appear in view of the comments found at the top of page 5 of the final rejection, that the Examiner recognized that MI2 and HLMI are two very different melt indices. The final blend melt index HLMI will, of course, have a value much higher than the melt index MI2. For example, the product shown in Example 2 of Debras has a sheer ratio SR₂ of 88 indicating that the final blind melt index HLMI is 88 times the melt index MI2 of the product involved.

As noted in applicants' previous response, the density relationships disclosed in Debras do not fall within the density ranges set forth in applicants' independent claim 1 and there would be no reason for one skilled in the art to attempt to modify the Debras reference in a manner contrary to its teachings.

To the extent that the issue of inherency as raised in the first office action under *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980) remains in the final rejection, to establish obviousness of the melt index and density characteristics set forth in applicants' claims, applicants would respectfully refer to the arguments on this issue made in the amendment filed on July 10, 2006. As noted there, there is no reasonable basis from which to infer inherency in the first instance. The patent *Debras* does not disclose the combination of melt indices and densities as claimed of the polyethylene components or of the blend of the components. The subject of the relationship of these polymer characteristics and their relationship to optical properties is not even mentioned in *Debras*. Clearly there is no suggestion in *Debras* of the improvement in resin properties in terms of enhanced optical properties, as achieved with the resin produced by the process of applicants' invention. While this enhancement in optical properties is not set forth in the claims, it is nevertheless an unexpected result.

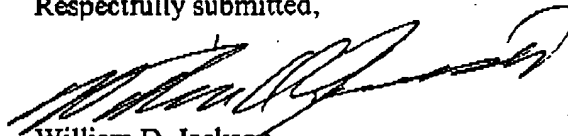
In addition to the foregoing considerations which are applicable to all claims, applicants would note again that claims 2,3, and 13-17 recite further characteristics of applicants' method which are not disclosed in or obvious in view of *Debras et al.* Specifically, claim 2 calls for the first low density linear low density polyethylene to have a density of no more than 0.935 g/cm³ and claim 3 calls for this polymer component to have a melt flow index MI₂ within the range of 0.5-5 dg/min. These characteristics, in combination with the additional requirement of claim 1, are not found in the prior art of reference. It is noted that the density of .925 g/ disclosed in *Debras* is for a polymer having an HLMI of .5 g/10min.

Claim 13 calls for the first resin to have a melt index MI₂ which is greater than the melt index MI₂ of the second resin. With regard to the HLMI actually disclosed in *Debras*, the exact opposite relationship is present and this presumably would indicate a corresponding relationship

for the MI_2 values. Any attempt to modify the Debras reference to arrive at the claimed relationship would clearly be directly contrary to the teachings of the reference. In addition it will be noted that the density characteristics set forth in claims 14 and 15 and the melt index characteristics set forth in claims 16 and 17 are not disclosed in or obvious in view of the reference.

In summary, there clearly is no issue presented under 35 U.S.C. 102 and the Debras patent, in view of the provisions 35 U.S.C. 103 (c), is not available to establish obviousness of the subject matter claimed here. Moreover, even if the Debras patent were available under 35 U.S.C. 103, the invention as claimed is not obvious to one of ordinary skill in the art since the Debras patent would not lead one with ordinary skill in the art to assemble the particular combination of resin parameters in the processes set forth in applicant's independent claim 1 or with the further recitations found in the dependent claims as discussed above. Accordingly, it is respectfully submitted that the rejection based upon Debras should be withdrawn and the case considered to be in condition for allowance.

Respectfully submitted,



William D. Jackson
Registration No. 20,846

WDJ/set
Attachment: Exhibit A

November 29, 2006

Schultz & Associates, P.C.
One Lincoln Centre
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
Telephone: 214/210-5931
Facsimile: 214/210-5941

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